

REMARKS

In the Office Action, Claims 1 - 4 and 7 - 10 were noted as pending in the application, and all claims were rejected. By this Amendment, no claims are canceled, no are added, and Claims 1 - 4 and 9 - 10 are amended. Thus, Claims 1 - 4 and 7 - 10 are pending in the application. The rejections of the Office Action are traversed below.

Rejection - 35 USC §101

In item 4, on pages 2 - 3 of the Office Action, Claims 1 - 4 and 7 - 10 were rejected under 35 USC §101 as being directed to nonstatutory subject matter. As a preliminary note, the Applicant thanks the Examiner for finding the invention as recited in Claims 1 - 4 and 7 - 10 produces a useful, concrete, and tangible result.

Claim 1 has been amended herein to recite that the method is implemented on a computer, thereby placing the invention recited in Claim 1 within the technological arts. MPEP §2106(IV)(B)(2)(b)(ii). Support for the amendment can be found in the specification as originally filed at least at page 9, lines 5 - 7. Since amended independent Claim 1 is directed to statutory subject matter, Claims 2 - 3 and 7 - 10, which depend from Claim 1, are also directed to statutory subject matter. Accordingly, withdrawal of the rejection of Claims 1 - 4 and 7 - 10 is respectfully requested.

Rejection - 35 USC §112

In items 5 - 10, on pages 3 - 4 of the Office Action, Claims 1, 3, 4, 9, and 10 were rejected under 35 USC §112, second paragraph, as being indefinite. Each of these claims have been amended herein to render each of the claims definite.

Support for the amendment can be found in the specification as originally filed, at least at page 4, line 5 - page 5, line 4. Withdrawal of the rejection of Claims 1, 3, 4, 9, and 10 is respectfully requested.

Rejection - 35 USC §102(a)

In items 12 - 17, on pages 5 - 7 of the Office Action, Claims 1, 2, 4, and 7 - 9 were rejected under 35 USC §102(a) as being anticipated by Decision Analyst, Inc. This rejection is respectfully traversed.

The Decision Analyst, Inc. Web Pages

The Decision Analyst, Inc. web pages constitute a collection of multiple Internet web pages for www.decisionanalyst.com as extracted by the private Internet archive access service located on the Internet at web.archive.org. The web pages present the various research systems, survey panels, and Internet survey options available by Decision Analyst, Inc.

The Decision Analyst, Inc. Web Pages Do Not Qualify as Prior Art under 35 USC §102(a)

The Office Action purports to present the archived web pages from the www.decisionanalyst.com site as a single, prior art reference. However, there has been no evidence or showing made that the 15 pages presented as the Decision Analyst, Inc. "reference" were in fact published on the same date and that the publication date was prior to the December 18, 2000 filing date of the present application. The presence of a copyright date on the various pages of 1999 and 2000 is not a publication date and is not a reliable indication of a publication date. In the absence of a publication date on the 15 pages, the pages cannot be relied upon

as prior art. MPEP § 2128. Additionally, there has been no showing that the web.archive.org archive retrieval system being relied upon by the Office Action has actually been tested and validated as being able to consistently determine the publication date of an Internet web page. Nor has there been a showing that the authors of the web.archive.org site designed this archive product to determine the publishing date of web pages and to be used to locate invalidating art under 35 USC §§ 102 and 103. None of the Decision Analyst web pages has a publication date, and there is no evidence that the various collections of Decision Analyst web pages were published on the same date, thereby constituting a single reference.

The Claimed Invention is Patentably Distinguishable Over the Decision Analyst, Inc. Web Pages

The Applicants' claimed invention is directed to a computer-implemented method for selecting surveys from a panel. In particular, and reciting relevant portions of independent Claim 1, exemplary embodiments of the Applicant's method include the steps of:

identifying a group within an available survey panel, the group having predetermined characteristics;

*selecting a first set of members from the group for a first survey;
temporarily removing the selected first set of members from the available survey panel; and*

selecting, with a processor, additional members from the available survey panel for a second survey using selection probabilities to compensate for the removal of the first set of members from the available survey panel.

The Decision Analyst web pages have been presented in the Office Action as disclosing each and every feature recited in Claims 1, 2, 4, and 7 - 9. The Applicant respectfully submits that, even presuming that the Decision Analyst web pages are prior art, the Office Action's reliance on the Decision Analyst web pages is misplaced. For example, Claim 1 recites the feature of "selecting, with a processor, additional members from the available survey panel for a second survey using selection probabilities to compensate for the removal of the first set of members from the available survey panel," which is not disclosed by any of the Decision Analyst web pages. The Office Action cites to various portions of the Decision Analyst web pages 7, 8, 9, and 14 as allegedly disclosing this feature. However, the cited portions of the web pages disclose the use of survey panels for conducting surveys and research (pages 7 and 8) and selecting consumers from survey panels for conducting research (pages 9 and 14). However, the Decision Analyst web pages fail to disclose the recited feature of selecting additional members from the panel for a second survey using selection probabilities to compensate for the removal of the first set of members from the panel. In fact, none of the Decision Analyst web pages disclose even the concept of selection probabilities, much less the compensation for the removal of panel members based on selection probabilities.

It is respectfully submitted that the Decision Analyst web pages fail to disclose each of the features recited in Claim 1; and, therefore, the Decision Analyst web pages cannot reasonably be said to anticipate the Applicant's claimed invention. Accordingly, Claim 1 is believed to be patentably distinguishable over the Decision Analyst documents, and it is respectfully requested that the rejection of Claim 1 be withdrawn.

Claims 2, 4, and 7 - 9 depend from Claim 1 and include all the features of Claim 1 plus additional features which are not taught or suggested by the Decision Analyst web pages. For example, Claim 4 specifies that multiple groups are identified within the available survey panel, members of these additional groups are selected for the survey and removed from the available survey panel, and wherein weights of the additional group members are modified to compensate for the removal of the members of the group from the available survey panel, which is neither taught nor suggested by the Decision Analyst web pages. The Office Action relies on the Decision Analyst web pages at pages 3, 5, 7, 8, and 14 as allegedly teaching this feature. However, the Applicants respectfully point out that not only do the cited web pages fail to disclose the features recited in Claim 4, the Decision Analyst web pages are completely silent regarding the modification of the weights of any panel group members. Therefore, for at least this reason and the reasons set forth above with respect to Claim 1, it is submitted that Claims 2, 4, and 7 - 9 patentably distinguish over the Decision Analyst web pages, and withdrawal of the rejection of Claims 2, 4, and 7 - 9 is respectfully requested.

Rejection - 35 USC §103

In items 19 - 20, on pages 7 - 8 of the Office Action, Claims 3 and 10 were rejected under 35 USC §103 as being unpatentable over Decision Analyst, Inc. This rejection is respectfully traversed.

**The Decision Analyst, Inc. Web Pages Do Not Qualify as Prior Art Under
35 USC §103(a)**

For the same reasons as presented above regarding the rejection of Claims 1, 2, 4, and 7 - 9 under 35 USC § 102(a), the Applicant respectfully submits

that the Decision Analyst web pages as extracted by the archival system of web.archive.org fail to qualify as prior art to the present Claims under 35 USC § 103(a).

The Claimed Invention is Patentably Distinguishable Over the Decision Analyst, Inc. Web Pages

The Office Action purports to reject Claim 3 as being disclosed in the Decision Analyst web pages. In particular, the Office Action cites to pages 7, 8, 9, and 14 of the Decision Analyst web pages as allegedly disclosing the recited feature of weights of the remaining members of the panel are modified to compensate for the group members removed from the panel. The Applicant respectfully submits that the Decision Analyst web pages disclose no such feature. At best, the Decision Analyst web pages merely disclose on page 7 the removal of selected panel members from subsequent surveys. The web pages are completely silent regarding the weighting of any survey panel members, much less weighting the remaining members of a survey panel.

The Office Action admits that the Decision Analyst web pages fail to disclose the recited feature of using a weight factor proportionate to the number of original members in the group over the number of remaining members in the group in the available panel. The Office Action then proceeds to assert, without support, that sampling without replacement is well known in statistics and that it would have been obvious to use a weight factor that reflects the sampling without replacement. First, the Applicant respectfully requests the Examiner cite a reference supporting the assertion that sampling without replacement is well known, pursuant to MPEP §2144.03. Second, whether or not it would have been obvious to use a weight factor

that reflects the sampling without replacement does not alter the fact, and the admission, that the Decision Analyst web pages fail to disclose the claimed feature of "a weight factor proportionate to the number of original members in the group over the number of remaining members in the group in the available panel."

For the reasons discussed above, Claim 3 is believed to be patentably distinguishable over the Decision Analyst web pages. Accordingly, it is respectfully requested that the rejection of Claim 3 be withdrawn.

In item 20, on page 8 of the Office Action, Claim 10 is rejected as being disclosed by the Decision Analyst web pages. In particular, the Office Action cites to pages 7, 8, 9, and 14 as disclosing an original weighting factor and a removal weighting factor. The Applicants respectfully disagree, noting that the Decision Analyst web pages are completely silent regarding any weighting factor whatsoever.

The Office Action admits that the Decision Analyst web pages fail to disclose the recited feature of a selection weighting factor. The Office Action then proceeds to assert, without support, that sampling without replacement is well known in statistics and that it would have been obvious to "more properly manage the selection of appropriate panel members by ensuring only members eligible are chosen." First, the Applicant respectfully requests the Examiner cite a reference supporting the assertion that sampling without replacement is well known, pursuant to MPEP §2144.03. Second, whether or not it would have been obvious to ensure that only eligible members are chosen does not alter the fact, and the admission, that the Decision Analyst web pages fail to disclose the claimed feature of "a selection weighting factor to deal with a non-proportionate selection."

For the reasons discussed above, Claim 10 is believed to be patentably distinguishable over the Decision Analyst web pages. Accordingly, it is respectfully requested that the rejection of Claim 10 be withdrawn.

Conclusion

It is submitted that none of the documents, either taken alone or in combination, teach the claimed invention. Thus, Claims 1 - 4 and 7 - 10 are deemed to be in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

Respectfully submitted,

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